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SENATE BILL 48

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Manny M Aragon

AN ACT

RELATING TO CHILD SUPPORT ENFORCEMENT; REDUCING THE INTEREST RATE FOR DELINQUENT CHILD SUPPORT; CHANGING THE STATUTE OF LIMITATIONS FOR PATERNITY CLAIMS; CHANGING THE STATUTE OF LIMITATIONS FOR PAST CHILD SUPPORT CLAIMS; ESTABLISHING AN ARREARS MANAGEMENT PROGRAM FOR UNPAID CHILD SUPPORT INTEREST AMNESTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 40-4-7.3 NMSA 1978 (being Laws 1999, Chapter 299, Section 1) is amended to read:

"40-4-7.3. ACCRUAL OF INTEREST--DELINQUENT CHILD AND SPOUSAL SUPPORT. --

A. Interest shall accrue on delinquent child support at the rate of four percent and spousal support at the rate set forth in Section 56-8-4 NMSA 1978 in effect when the

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1 support payment becomes due and shall accrue from the date the
2 support is delinquent until the date the support is paid [~~or~~
3 ~~consolidated in a judgment~~].

4 B. Interest shall accrue on a consolidated judgment
5 for delinquent child support at the rate [~~provided in Section~~
6 ~~56-8-4 NMSA 1978 in effect~~] of four percent when the
7 consolidated judgment is entered until the judgment is
8 satisfied.

9 C. Unless the order, judgment, decree or wage
10 withholding order specifies a due date other than the first day
11 of the month, support shall be due on the first day of each
12 month and, if not paid by that date, shall be delinquent.

13 D. In calculation of support arrears, payments of
14 support shall be first applied to the current support
15 obligation, next to any delinquent support, next to any
16 consolidated judgment of delinquent support, next to any
17 accrued interest on delinquent support and next to any interest
18 accrued on a consolidated judgment of delinquent support.

19 E. The human services department shall have the
20 authority to forgive accrued interest on delinquent child
21 support assigned to the state not otherwise specified in an
22 order, judgment, decree or income withholding order if, in the
23 judgment of the secretary of human services, forgiveness will
24 likely result in the collection of more child support, spousal
25 support or other support and will likely result in the

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1 satisfaction of the judgment, decree or wage withholding order.
2 This authority shall include the ability to authorize the
3 return of suspended licenses.

4 F. The human services department may adopt rules
5 and regulations as necessary to implement the provisions of the
6 Support Enforcement Act."

7 Section 2. Section 40-11-7 NMSA 1978 (being Laws 1986,
8 Chapter 47, Section 7) is amended to read:

9 "40-11-7. DETERMINATION OF FATHER AND CHILD
10 RELATIONSHIP--WHO MAY BRING ACTION--WHEN ACTION MAY BE
11 BROUGHT. --

12 A. Any interested party may bring an action for the
13 purpose of determining the existence or nonexistence of the
14 parent and child relationship within twelve years of the birth
15 of the child.

16 B. If the interested party does not bring an action
17 within the twelve-year statute of limitations, the interested
18 party must show good cause.

19 [~~B.~~] C. If an action under this section is brought
20 before the birth of the child, all proceedings shall be stayed
21 until after the birth, except service of process and the taking
22 of depositions to perpetuate testimony."

23 Section 3. Section 40-11-15 NMSA 1978 (being Laws 1986,
24 Chapter 47, Section 15, as amended) is amended to read:

25 "40-11-15. JUDGMENT OR ORDER. --

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1 A. The judgment or order of the court determining
2 the existence or nonexistence of the parent and child
3 relationship is determinative for all purposes.

4 B. If the judgment or order of the court is at
5 variance with the child's birth certificate, the court shall
6 order that a new birth certificate be issued.

7 C. The judgment or order may contain any other
8 provision directed against or on behalf of the appropriate
9 party to the proceeding concerning the duty of past and future
10 support, the custody and guardianship of the child, visitation
11 with the child, the furnishing of bond or other security for
12 the payment of the judgment or any other matter within the
13 jurisdiction of the court. Pursuant to the provisions of
14 Section 40-11-23 NMSA 1978, the judgment or order may direct
15 the father to pay the reasonable expenses of the mother's
16 pregnancy, birth and confinement. The court shall order child
17 support retroactive to the date of the child's birth pursuant
18 to the provisions of Sections 40-11-23 and 40-4-11 through
19 40-4-11.3 NMSA 1978; provided that, in deciding whether or how
20 long to order retroactive support, the court shall consider:

21 (1) whether the alleged or presumed father has
22 absconded or could not be located; and

23 (2) whether equitable defenses are applicable.

24 D. A determination of parentage and adjudication of
25 support is binding on:

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- 1 (1) a signatory on an acknowledgment of
2 paternity;
- 3 (2) a nonresident party subject to the court's
4 jurisdiction pursuant to Section 40-6A-201 NMSA 1978; and
- 5 (3) the child, if:
- 6 (a) the determination was based on an
7 acknowledgment of paternity and the acknowledgment is
8 consistent with the results of genetic testing;
- 9 (b) the child was a party or was
10 represented in the proceeding by a guardian ad litem;
- 11 (c) there is a stipulation or admission
12 in the final order that the parties are the parents of the
13 child; or
- 14 (d) in a proceeding to dissolve a
15 marriage or establish support, a final order expressly
16 identified the child as a "child of the marriage", "issue of
17 the marriage", "child of the parties" or similar words that
18 indicate the parties are the parents of the child and, if
19 applicable, the court had personal jurisdiction over any
20 nonresident party pursuant to Section 40-6A-201 NMSA 1978.

21 E. Support judgments or orders ordinarily shall be
22 for periodic payments, which may vary in amount. In the best
23 interest of the child, a lump-sum payment or the purchase of an
24 annuity may be ordered in lieu of periodic payments of support;
25 provided, however, nothing in this section shall deprive a

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1 state agency of its right to reimbursement from an appropriate
2 party should the child be a past or future recipient of public
3 assistance.

4 F. In determining the amount to be paid by a parent
5 for support of the child, a court, child support hearing
6 officer or master shall make such determination in accordance
7 with the provisions of the child support guidelines of Section
8 40-4-11.1 NMSA 1978.

9 G. Bills for pregnancy, childbirth and genetic
10 testing are admissible as evidence without requiring
11 third-party foundation testimony and constitute prima facie
12 evidence of amounts incurred."

13 Section 4. Section 40-11-16 NMSA 1978 (being Laws 1986,
14 Chapter 47, Section 16, as amended) is amended to read:

15 "40-11-16. COSTS.--The court may order reasonable fees of
16 counsel, experts and the child's guardian and other costs of
17 the action and pre-trial proceedings, including blood or
18 genetic tests, to be paid by any party in proportions and at
19 times determined by the court pursuant to the provisions of
20 Section 40-11-23 NMSA 1978. The court may order the proportion
21 of any indigent party to be paid from court funds."

22 Section 5. Section 40-11-23 NMSA 1978 (being Laws 1986,
23 Chapter 47, Section 23, as amended) is amended to read:

24 "40-11-23. LIMITATION.--

25 A. An action to determine a parent and child

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1 relationship under the Uniform Parentage Act shall be brought
2 no later than [~~three years after the child has reached the age~~
3 ~~of majority.~~

4 ~~B. The action to establish paternity under that act~~
5 ~~shall be available for any child for whom a paternity action~~
6 ~~was brought and dismissed on or after August 16, 1984 because~~
7 ~~of the application of a statute of limitations of less than~~
8 ~~eighteen years] twelve years after the birth of the child.~~

9 B. If the interested party does not bring an action
10 within the twelve-year statute of limitations, the interested
11 party must show good cause. "

12 Section 6. Section 56-8-4 NMSA 1978 (being Laws
13 1851-1852, p. 255, as amended) is amended to read:

14 "56-8-4. JUDGMENTS AND DECREES--BASIS OF COMPUTING
15 INTEREST.--

16 A. Interest shall be allowed on judgments and
17 decrees for the payment of money from entry and shall be
18 calculated at the rate of eight and [~~three-quarters~~] three-
19 fourths percent per year, unless:

20 (1) the judgment is rendered on a written
21 instrument having a different rate of interest, in which case
22 interest shall be computed at a rate no higher than specified
23 in the instrument; [~~or~~]

24 (2) the judgment is based on tortious conduct,
25 bad faith or intentional or willful acts, in which case

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1 interest shall be computed at the rate of fifteen percent; or
2 (3) the judgment is based on unpaid child
3 support, in which case interest shall be computed at the rate
4 of four percent.

5 B. Unless the judgment is based on unpaid child
6 support, the court in its discretion may allow interest of up
7 to ten percent from the date the complaint is served upon the
8 defendant after considering among other things:

9 (1) if the plaintiff was the cause of
10 unreasonable delay in the adjudication of the plaintiff's
11 claims; and

12 (2) if the defendant had previously made a
13 reasonable and timely offer of settlement to the plaintiff.

14 C. Nothing contained in this section shall affect
15 the award of interest or the time from which interest is
16 computed as otherwise permitted by statute or common law.

17 D. The state and its political subdivisions are
18 exempt from the provisions of this section except as otherwise
19 provided by statute or common law. "

20 Section 7. A new section of the Support Enforcement Act
21 is enacted to read:

22 "[NEW MATERIAL] UNPAID CHILD SUPPORT INTEREST ARREARS
23 MANAGEMENT PROGRAM --The department shall designate an arrears
24 management program starting on or after December 15, 2004 to
25 provide amnesty for child support arrears, pursuant to

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1 procedures adopted by the department. The arrears management
2 program shall not exceed more than twelve months and shall only
3 be authorized thereafter every two years. The department
4 shall, before renewing the next arrears management program,
5 provide to the interim welfare reform oversight committee a
6 report on the previous arrears management program "